



CMA(MD).No.462 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 12.04.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.462 of 2017

and

C.M.P(MD) No.4981 of 2017

The United India Insurance Company Limited,
63-C, Palayamkotai Road,
Behind Government Hospital,
Thiruchendur – 628 215.

....Appellant/ 2nd Respondent

Vs.

1. M.Anthoniammal
2. M.Selvi Sahayamary
3. P.Jansi Victoria
4. Minor P.Alto Pasio Thomas
5. Minor P.Fabiana Pancras Nola ... Respondents 1 to 5/Petitioners

(The Minor Respondents 4 and 5 are represented through
their mother and next friend 3rd respondent)

6. S.Lucia Nirmala Rani
7. A.Hussain ... Respondents 6 and 7/ Respondents 1 and 3

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the Judgment and Decree dated 15.04.2016 passed in M.C.O.P.No.440 of 2014 on the file of the Motor Accidents Claims Tribunal (II Additional District Judge) Thoothukudi.



WEB COPY



CMA(MD).No.462 of 2017

For Appellant : Mr.G.Prabhu Rajadurai

For Respondents : No Appearance

J U D G M E N T

The present appeal has been filed by the Insurance Company challenging the award of the Motor Accidents Claims Tribunal, (II Additional District Judge) Thoothukudi, made in M.C.O.P.No.440 of 2014 primarily on the ground of liability.

2. According to the claimants the deceased was driving a Motor Cycle belonging to the first respondent and the third respondent in the claim petition had driven another Motor Cycle in a rash and negligent manner and dashed against the Motor Cycle driven by the deceased person. In the said accident the deceased was seriously injured and had passed away. The legal heirs of the deceased person had sought for compensation of a sum of Rs.3,90,600/- (Rupees Three Thousand Ninety Thousand and Six hundred only) under Section 163 -A of the Motor Vehicle Act.



CMA(MD).No.462 of 2017

3. The owner of the offending vehicle viz., the third respondent had remained ex-parte. The second respondent who is the insurer of the vehicle in which the deceased had travelled, filed a counter contending that only the third respondent in the claim petition was responsible for the accident. They have also disputed the quantum of compensation as prayed for by the claimants.

4. The Tribunal, after considering the oral and documentary evidence came to a conclusion that the accident has happened only due to the rash and negligent driving of the third respondent. The Tribunal also arrived at a finding that the third respondent alone is liable to pay the compensation. However, the Tribunal mulcted the liability to pay the compensation on the appellant Insurance Company and directed them to satisfy the award and recover the same from the third respondent. This award is under challenge in the present appeal.

5. The learned counsel appearing for the appellant had contended that Ex.P1-FIR and Ex.P.4-Charge Sheet clearly indicate that the accident had happened only due to the rash and negligent driving of the



CMA(MD).No.462 of 2017

third respondent in the claim petition. He further contended that the Tribunal has also arrived at a finding that the third respondent alone was responsible for the said accident. There is no contract of Insurance between the third respondent and the appellant/Insurance Company. Therefore, the appellant/ Insurance Company is not liable to pay compensation for the third respondent who is the owner/driver of the offending vehicle.

6. The learned counsel appearing for the appellant further contended that as there is no negligence on the part of the owner/driver of the vehicle in which the deceased had travelled, the question of directing the appellant/Insurance Company to pay the award amount and thereafter recover the same from the owner of the offending vehicle does not arise. Hence, he prayed for allowing the appeal.

7. Though notice has been served upon the claimants and the owner of the offending vehicle, they have not chosen to appear either in person or through their counsel.



CMA(MD).No.462 of 2017

WEB COPY

8. A perusal of Ex.P1 – FIR and Ex.P.4-Charge Sheet would clearly indicate that the accident had happened only due to a rash and negligent driving of the third respondent in the claim petition. The Tribunal, after considering the oral evidence of P.W.1 and P.W.2 and also relying upon the Ex.P1 and P.4 had arrived at a finding that the third respondent in the claim petition is alone a responsible for the accident. The Tribunal has also arrived at a finding that the third respondent alone is liable to pay the compensation.

9. The question of pay and recovery would arise only when there is a contract of insurance between the person who is held to be liable to pay the compensation and he had committed any violation of policy condition. In the present case, there is no contract of the insurance between the appellant Insurance Company and the third respondent viz., A.Hussain. The vehicle owned by the third respondent in the claim petition was not at all insured.



CMA(MD).No.462 of 2017

WEB COPY

10. The Tribunal have arrived at a finding that there is no negligence on the part of the first respondent in the claim petition viz., owner of the vehicle, which was driven by the deceased person. In the present case no liability fixed upon the first respondent. In such an event, the question of pay and recovery would not arise. The Tribunal has erroneously directed the appellant Insurance Company to satisfy the award and recover the same from the third respondent, who is not an insured person.

11. In view of the above said facts, this Court passes the following order:

The respondents 1 and 2 in the claim petition are hereby exonerated. The third respondent alone is liable to pay the compensation amount of Rs.4,00,000/- (Rupees Four Lakhs only) along with interest at the rate of 7.5% from the date of claim petition.



CMA(MD).No.462 of 2017

WEB COPY

12. This Civil Miscellaneous Appeal is allowed to the extent as stated above. There shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

12.04.2023

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
ebsi

To

- 1.The Motor Accidents Claims Tribunal
(II Additional District Judge)
Thoothukudi.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



CMA(MD).No.462 of 2017

R.VIJAYAKUMAR,J.

ebsi

Judgement made in
C.M.A(MD)No.462 of 2017

12.04.2023